

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL REVISION APPLICATION No. 223 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

Sd/-

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
? **1 to 5 NO**

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RAMABHAI SHANKERBHAI BHOI - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MC BAROT for Applicant(s) : 1,
MR HL JANI ADDL PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 05/04/2007

ORAL JUDGMENT :

1. None present for respondent No.2, though served, even as a special notice was issued and served upon him as the victim of the offence who could accept compensation.

2. The petitioner has invoked the provisions of section 397 of the Code of Criminal Procedure, 1973 (for short, "the Code") to challenge the order of learned Judicial Magistrate, First Class, Dehgam in Criminal Case No.951 of 1990 and the judgment and order in his Criminal Appeal No.9 of 1993 whereunder his conviction for the offences punishable under sections 279 and 338 of the Indian Penal Code, 1860 and sections 112 and 116 of the Motor Vehicles Act, 1988 was confirmed and the order of sentence was modified to simple imprisonment for ten days and seven days to run concurrently and total fine of Rs.1000/-. The plea of the petitioner for benefit of the provisions of the Probation of Offenders Act, 1958 was rejected on the ground that road accidents due to negligent driving had become a routine affair.

3. Learned counsel Mr.Barot, appearing for the petitioner, submitted that the petitioner was serving as a driver under the Gujarat State Road Transport Corporation for 17 years without any other accident caused by him and his imprisonment was likely to cause loss of his job and livelihood under the service rules. He relied upon several judgments of this court and the

Supreme Court, including those in ***Jadeja Takhubha Lakhubha v. State of Gujarat [1985 GLH (U.J.) 17]***, ***State of Karnataka v. Muddappa [(1999) 5 SCC 732]*** and ***in Mohammad v. State of Rajasthan [(2000) 10 SCC 486]***, to submit that the petitioner could be released after admonition under the provisions of section 3 of the Probation of Offenders Act, 1958 in view of the peculiar facts and circumstances and passage of time since his conviction and his offer to pay, by way of additional compensation, the sum of Rs.5000/- to the victim of the offence.

4. Learned A.P.P. Mr.H.L.Jani submitted that court may direct release of the petitioner on probation with a further direction to pay to respondent No.2 the sum of Rs.5000/- with a clarification that such payment would be without prejudice to the right of the respondent to adequate amount of compensation if claim therefor is made under the Motor Vehicles Act in any other forum.

5. Accordingly, without entering into merits of other contentions of the petitioner and having regard to the nature of the offence, character of the petitioner, his record and the likely consequences of his imprisonment, the

application is partly allowed and the sentence of imprisonment is set aside, and he is ordered to be released after admonition, with direction to deposit the sum of Rs.5000/- in the court of learned Judicial Magistrate, First Class, Dehgam, within a fortnight from today. Learned Judicial Magistrate, First Class, Dehgam shall pay, by an account payee cheque, the amount of Rs.5000/- to Shri Kalusinh Pratapsinh Chauhan upon his making an appropriate application and after proper identification. If the amount is not so claimed and collected by said respondent No.2 within a period of one year, that amount shall be paid to the Legal Aid Authority of the district. It is clarified that the amount to be deposited, as aforesaid, by the petitioner and which may be collected by respondent No.2 shall be taken into account in terms of the provisions of section 5 of the Probation of Offenders Act, 1958. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

Sd/-
(**D.H.Waghela, J.**)

(KMG Thilake)